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**Subject: State Aid SA.56922 (2020/N) – Poland  
Polish anti-crisis measures – direct grants, repayable advances, tax  
and payments advantages, tax deferrals and wage subsidies schemes  
related to COVID-19**

Excellency,

## **1. PROCEDURE**

- (1) By electronic notification of 2 April 2020, Poland notified 11 measures ('the measures') on the basis of Article 107(3)(b) of the Treaty on the Functioning of the European Union, as interpreted by the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended on 3 April 2020 ("the Temporary Framework")<sup>1</sup>. Seven of these aid measures are in the form of direct grants, repayable advances, tax and payments advantages under section 3.1. of the Temporary Framework; one consists in a deferral of taxes under section 3.9 of the Temporary Framework; and the last three aid measures are in the form of wage subsidies for employees to avoid lay-offs under section 3.10 of the Temporary Framework.
- (2) By emails of 8, 10, and 14 April 2020, the Commission requested additional information on the measures. Poland replied by emails of 9, 10, 15, 16 and 20 April 2020.
- (3) The Polish authorities confirm that the notification does not contain confidential information.

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<sup>1</sup> Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1-9 and Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, 03.04.2020, C(2020)2215 final, OJ C 112I, 4.4.2020, p. 1-9.

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- (4) Poland exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,<sup>2</sup> and to have this Decision adopted and notified in English.

## **2. DESCRIPTION OF THE MEASURES**

- (5) Poland considers that the COVID-19 outbreak has started to affect the real economy. The measures form part of an overall package of measures and aim to ensure that sufficient liquidity remains available in the market, to address the economic losses inflicted upon undertakings impacted by the outbreak and to preserve the continuity of economic activity during and after the outbreak.
- (6) The aid will be granted under 11 schemes in the form of direct grants, repayable advances, tax and payments advantages, deferrals of tax and wage subsidies:
- Wages subsidies for employees (Measure 1);
  - Co-financing of conducting business activities for natural persons not having employees (Measure 2);
  - Low-interest loan (in the form of repayable advance) to cover the cost of doing business for a micro-entrepreneur (Measure 3);
  - Co-financing of remuneration of persons employed by non-governmental organisations (Measure 4);
  - Property tax exemptions (Measure 5);
  - Extension of deadlines for payments of property tax (Measure 6);
  - Financial support of natural persons, legal persons or organisational units without legal personality, if creative or artistic activity cannot be continued in its current form during the period of epidemic emergency (Measure 7);
  - Exemption from payments for the rent or lease of public real estate (Measure 8);
  - Withdrawal from the recovery of civil law claims and liabilities due attributable to a local government or its organizational units (Measure 9);
  - Exemption from payment of unpaid compulsory social security and health insurance contributions due for the period from 1 March 2020 to 31 May 2020 (Measure 10);
  - Wage subsidies for disabled employees and COVID-19 related training aid (Measure 11).

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<sup>2</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

- (7) The estimated number of beneficiaries for all measures listed above are 2.5 million (including 2 million of self-employed and 0.5 million of undertakings, which employ at least one employee).
- (8) The measures are expressly based on Article 107(3)(b) of the Treaty on the Functioning of the European Union (“TFEU”), as interpreted by Section 2 of the Temporary Framework.

## **2.1. Measures covered by section 3.1 of the Temporary Framework**

### *2.1.1. The nature and form of aid*

- (9) The measures notified by Poland under section 3.1. are measures 3, 5 and 7 to 11. They take the form of direct grants, repayable advances, tax and payment advantages. Their purpose is to ensure financial liquidity to undertakings affected by the economic repercussions of the COVID-19 outbreak. They also aim to maintain jobs and to minimize other economic effects of the pandemic caused by the shutdown of businesses, lower consumption demand and supply chain disruptions.

### *2.1.2. National legal basis*

- (10) The legal basis for the notified aid measures 3, 5, 7 to 10 is Article 15 of the legal Act of 31 March 2020 on special solutions related to the prevention and eradication of COVID-19, other infectious diseases and the resulting crisis and some other acts<sup>3</sup>. In particular:
- Article 15zzd and Article 73(40) of the legal Act of 16 April 2020<sup>4</sup> amending the legal Act of 31 March 2020 on special solutions related to COVID-19 (Measure 3),
  - Article 15p (Measure 5),
  - Article 15m (Measure 7),
  - Article 15zzze (Measure 8),
  - Article 15zzzf and zzzg (Measure 9), and
  - Article 31zo (Measure 10).
- (11) The legal basis for the notified measure 11 is Articles 26, 26a, 26d, 32, 41 and 68ge of the Rehabilitation Act of 27 August 1997 on professional and social rehabilitation and employment of disabled people<sup>5</sup> as amended by the legal Act of 31 March 2020.

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<sup>3</sup> <http://dziennikustaw.gov.pl/D2020000056801.pdf>

<sup>4</sup> The legal Act of 16 April 2020 on specific support instruments in connection with the spread of the SARS-CoV-21 virus, OJ 2020, item 695.

<sup>5</sup> OJ 1997 No. 123 item 776.

### 2.1.3. Administration of the measures

(12) The aid granting authorities responsible for administering the aid measures described in recital (9) are listed in the table below:

Number of the measure	Measure title	Granting Authority
3	Low-interest loan (in the form of repayable advance) to cover the cost of doing business for a micro-entrepreneur	'Poviat staroste' (Head of the county) through 'Poviat' labour office
5	Property tax exemptions	Municipalities
7	Financial support of natural persons, legal persons or organisational units without legal personality, if creative or artistic activity cannot be continued in its current form during the period epidemic emergency	Minister of Culture and National Heritage
8	Exemption from payments for the rent or lease of public real estate	'Poviat staroste', city mayor, city councils (depending on who is the owner of the real estate)
9	Withdrawal from the recovery of civil law claims and liabilities due attributable to a local government or its organizational units	Municipalities
10	Exemption from payment of unpaid compulsory social security and health insurance, Labour Fund, Solidarity Fund, Guaranteed Employee Benefits Fund or Bridge Pension contributions due for the period from 1 March 2020 to 31 May 2020	The Social Insurance Institution ('ZUS')
11	Wage subsidies for disabled employees and COVID related training aid	The State Fund for Rehabilitation of Disabled People ('PFRON') and 'Poviat staroste'

### 2.1.4. Budget and duration

(13) The estimated budget per measure is indicated in the table below:

Number of the measure	Measure title	Estimated budget (PLN)
3	Low-interest loan (in the form of repayable advance) to cover the cost of doing business for a micro-entrepreneur	1,22 billion
5	Property tax exemptions	388,3 million
7	Financial support of natural persons, legal persons or organisational units without legal personality, if creative or artistic activity cannot be continued in its current form during the period epidemic emergency	20 million
8	Exemption from payments for the rent or lease of public real estate	450 million
9	Withdrawal from the recovery of civil law claims and liabilities due attributable to a local government or its organizational units	350 million

10	Exemption from payment of unpaid compulsory social security and health insurance, Labour Fund, Solidarity Fund, Guaranteed Employee Benefits Fund or Bridge Pension contributions due for the period from 1 March 2020 to 31 May 2020	9.5 billion
11	Wage subsidies for disabled employees and COVID related training aid	3.5 billion

- (14) The Polish authorities estimate that no more than PLN 25.5 billion (EUR 5.6 billion) in aid will be granted under the measures covered by section 3.1. of the Temporary Framework.
- (15) The measures 3, 5 and 7 to 11 are funded exclusively by public funds.
- (16) The aid may not be granted under the measures before the Commission has adopted a decision declaring the above-mentioned measures compatible with the internal market. The aid may be granted no later than 31 December 2020.

#### *2.1.5. Beneficiaries*

- (17) The beneficiaries of the measures are all undertakings<sup>6</sup> and all self-employed registered and active in Poland, which are affected by the economic repercussions of COVID-19 and having temporary financial difficulties.
- (18) Undertakings active in the field of primary production of agricultural products are eligible to all aid measures described in recital (6) with the exception of measures 3, 5 and 7.
- (19) Under the notified measures, aid cannot be granted to undertakings that were already in difficulty within the meaning of the General Block Exemption (“GBER”) and the Agriculture and Fishery Block Exemptions<sup>7</sup> on 31 December 2019.

#### *2.1.6. Sectoral and regional scope of the measures*

- (20) The measures apply to the whole territory of Poland and are open to all sectors of the economy, with the exclusion of the primary production of agricultural products for measures 3, 5 and 7.

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<sup>6</sup> In the meaning of the Polish Law of 6 March 2018 – Law of Entrepreneurs.

<sup>7</sup> As defined in Article 2 (18) of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1, Article 2 (14) of the Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193 of 1.7.2014, p.1, and Article 3 (5) of the Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369 of 24 December 2014, p. 37.

### 2.1.7. *Basic elements of the measures*

- (21) Aid under measures 3, 5 and 7 to 11 take the form of direct grants, repayable advances and tax or payment advantages. Such aid aims at remedying serious disturbances in the economy as referred to in Article 107(3)(b) TFEU. It may be granted provided that its nominal value, including other aid granted in accordance with section 3.1 of the Temporary Framework, does not exceed the following amounts (all figures used being expressed in gross):
- (a) EUR 100 000 for undertakings operating in the primary production sector of agricultural products<sup>8</sup>, or
  - (b) EUR 120 000 for undertakings operating in the fisheries and aquaculture sector<sup>9</sup>, or
  - (c) EUR 800 000 for other undertakings.
- (22) The aid granted under the notified measures in accordance with section 3.1 of the Temporary Framework to undertakings active in the processing and marketing of agricultural products is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.
- (23) Aid to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in Article 1(1)(a) to (k) of Commission Regulation (EU) No 717/2014<sup>10</sup>.
- (24) Where an undertaking is active in several sectors to which different maximum amounts apply, in accordance with point 23bis of the Temporary Framework, Poland shall ensure, by appropriate means, such as separation of accounts, that the relevant ceiling is respected for each of these activities, and that the highest possible amount is not exceeded in total.
- (25) Specifically, as regards measure 11, Poland explained that the aid will be granted for i) wage subsidies for workers with disabilities; ii) for the additional costs of workers with disabilities and iii) for COVID-19 related training aid for workers with disabilities. Aid related to disabled employees provides additional liquidity to undertakings affected by the economic repercussions of the COVID-19 outbreak.

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<sup>8</sup> All products listed in Annex I to the TFEU with the exception of the products of the fisheries and aquaculture sector.

<sup>9</sup> Products listed in Annex I to Regulation No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000, OJ L 354, 28.12.2013, p. 1.

<sup>10</sup> Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 90, 28.6.2014, p. 45.

## 2.2. Measure covered by section 3.9 of the Temporary Framework

### 2.2.1. *The nature and form of aid*

- (26) Measure 6 provides aid in the form of property tax deferrals for certain undertakings affected by the negative economic consequences due to COVID-19 in order to provide liquidity.

### 2.2.2. *National legal basis*

- (27) The legal basis for the notified aid measure 6 is the Article 15q of the legal Act of 31 March 2020 amending the Act on special solutions related to the prevention and eradication of COVID-19, other infectious diseases and the resulting crisis and some other acts<sup>11</sup>.
- (28) This article lays down that “*The commune council may extend, by way of resolution, for the indicated groups of entrepreneurs whose financial liquidity has deteriorated due to incurring negative economic consequences due to COVID-19, deadlines for payment of instalments of property tax payable in April, May and June 2020, not longer than until 30 September 2020*”.

### 2.2.3. *Administration of the measure*

- (29) The aid granting authorities responsible for administering the measure 6 are the municipalities.

### 2.2.4. *Budget and duration*

- (30) The estimated budget for the measure is about PLN 30 million.
- (31) The ultimate deadline for payment of the instalments of April, May and June 2020 cannot be later than 30 September 2020. The Polish authorities confirmed that aid may not be granted under the measure after 31 December 2020.

### 2.2.5. *Beneficiaries*

- (32) Where the commune council adopts a resolution pursuant to Article 15q of the Law, the beneficiaries of the measure are those groups of entrepreneurs, defined in the resolution, whose financial liquidity deteriorated due to COVID-19.

### 2.2.6. *Sectoral and regional scope of the measure*

- (33) Article 15q of the Law potentially applies to undertakings of all economic sectors and established on the whole territory of Poland. The precise scope of application of the tax deferral depends on the subsequent adoption of resolutions adopted at the level of municipalities.

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<sup>11</sup> See footnote 5 above.

### 2.2.7. Basic elements of the measure

- (34) The measure provides aid in the form of property tax deferrals with respect to the instalments payable in April, May and June 2020. The payment of these instalments can be postponed until 30 September 2020 at the latest.
- (35) The property tax (real estate tax)<sup>12</sup> is a tax paid by owners and perpetual users of real estate (land and buildings). The tax base is the area (notably for land) or the value of the buildings (or parts thereof) related to conducting business. The tax rates are laid down by the communes, taking into account ceilings defined at national level. For legal persons, the tax is paid in (twelve) monthly instalments. The proceeds from the tax flow to the communes.

## 2.3. Measures covered by section 3.10 of the Temporary Framework

### 2.3.1. The nature and form of aid

- (36) The measures 1, 2 and 4 provide aid in the form of wage subsidies for employees to prevent lay-offs resulting from the COVID-19 pandemic outbreak.

### 2.3.2. National legal basis

- (37) The legal basis for the notified aid measures 1, 2 and 4 is the Article 15 of the legal Act of 31 March 2020 amending the Act on special solutions related to the prevention and eradication of COVID-19, other infectious diseases and the resulting crisis and some other acts<sup>13</sup>. In particular:

- Article 15zzb (Measure 1),
- Article 15zzc (Measure 2),
- Article 15zze (Measure 4).

### 2.3.3. Administration of the measures

- (38) The aid granting authorities responsible for administering the aid measures 1, 2 and 4 are listed in the table below:

Number of the measure	Measure title	Granting Authority
1	Wage subsidies for employees	'Poviat staroste' through 'Poviat' labour office
2	Co-financing of conducting business activities for natural persons not having employees	'Poviat staroste' through 'Poviat' labour office

<sup>12</sup> Podatek od nieruchomości. See Article 2 and following of the Act of 12 January 1991 on local taxes and fees (Ustawa z dnia 12 stycznia 1991 r. o podatkach i opłatach lokalnych).

<sup>13</sup> *Idem.*



4	Co-financing of remuneration of persons employed by non-governmental organisations	'Poviat staroste' through 'Poviat' labour office
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(39) The Head of the county (Starosta) and the District Employment Office ('Poviat') are responsible for administering the wage subsidy measures implemented under section 3.10 of the Temporary Framework.

#### 2.3.4. *Budget and duration*

(40) The estimated budget per measure is indicated in the table below:

Number of the measure	Measure title	Estimated budget (PLN)
1	Wages subsidies for employees	7,9 billion
2	Co-financing of conducting business activities for natural persons not having employees	1,6 billion
4	Co-financing of remuneration of persons employed by non-governmental organisations	78 million

(41) Aid may be granted under the measure as from its approval until 31 December 2020.

(42) The support granted as wage subsidy will be partly co-financed from the European Social Fund (ESF).

#### 2.3.5. *Beneficiaries*

(43) The beneficiaries of wage subsidies granted under the measures covered by section 3.10 of the Temporary Framework as described in recital (36) are:

- (a) Micro, small and medium-sized enterprises,
- (b) Natural persons conducting economic activity (i.e. self-employed),
- (c) Non-governmental organizations or entities referred to in Article 3 clause 3 of the Act of April 24, 2003 on public benefit activities and volunteering.

#### 2.3.6. *Sectoral and regional scope of the measure*

(44) The measure is open to all sectors. It applies to the whole territory of Poland.

#### 2.3.7. *Basic elements of the measures*

(45) The main objective of the notified wage support granted under section 3.10 of the Temporary Framework is to primarily support self-employed, SMEs and NGOs, which are considered to be most affected by the COVID-19 pandemic and therefore most likely to take employment reduction decisions.

- (46) The measures target undertakings, in particular those from the SME and NGO sectors, which are primarily at risk of losing financial liquidity. In some industries - primarily those targeting tourist services (hospitality, passenger transport, tour guides and tour operators) - there is a real risk of business closure and lost jobs. Due to the COVID-19 pandemic business activities are exposed to instability and even complete loss of revenue, as a result of lack of orders, or the cancellation of ongoing or concluded contracts. At particular risk are SMEs and self-employed performing work on the basis of an agency contract, and other contracts of a limited duration.
- (47) Under the notified scheme, the aid in the form of a wage subsidy is dependent on the decrease in the undertaking's turnover resulting from the COVID-19 pandemic. The aid mechanism is based on the underlying assumption that the greater the decrease in turnover, the greater the likelihood of employee dismissals by undertakings, in particular SMEs. The Polish authorities confirmed that the aid can only be awarded based on an aid scheme, and that ad hoc aid outside a scheme is excluded.
- (48) Under the notified measure, the decrease in turnover is understood as a decrease in the sale of goods or services in quantitative or value terms calculated as the ratio of total turnover in any two subsequent calendar months in the period from 1 January 2020 to the day preceding the day of submitting the application for support, compared to the total turnover for the corresponding two consecutive calendar months of the previous year:
- (a) When the turnover has decreased by at least 30%, the wage subsidy granted to the employer shall not exceed the sum of 50% of the salaries of individual employees covered by the aid application (with social security contributions due on these salaries), not exceeding more than 50% of the minimum national remuneration<sup>14</sup> (increased by the value of social security contribution dues by the employer), per employee;
  - (b) When the turnover has decreased by at least 50%, the wage subsidy granted to the employer shall not exceed the sum of 70% of the salaries of individual employees covered by the aid application (together with social security contributions due on these salaries), not more than 70% of the minimum national remuneration (increased by the value of social security contribution due by the employer), per employee;
  - (c) When the turnover has decreased by at least 80%, the wage subsidy shall not exceed the amount constituting 90% of the salaries of individual employees covered by the aid application (together with social security contributions due on these salaries), however not exceeding more than 90% of the minimum national remuneration (increased by the value of social security contribution due by the employer), per employee.
- (49) The wage subsidy is to be paid on a monthly basis, after the entrepreneur has submitted a declaration on employing employees covered by the aid application to

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<sup>14</sup> The national minimum wage is established for a given year. The currently applicable minimum wage was announced in September 2019 and will be valid till September 2020. Under the notified measure the minimum remuneration will be established as a gross amount.

the District Employment Office, including the overall remuneration costs subject to support under the notified measure. Since the aid intensity of aid granted under the measure is established on the basis of the minimum national remuneration (therefore not dependent on the gross wage of a specific employee) in application of the method described in recital (48), the latter can also be applied to self-employed whose remuneration is dependent on revenues generated through own business activity.

- (50) Subsidies may be granted from the day of submitting the application in question for a period not longer than 3 months.
- (51) The entrepreneur is obliged to retain employees covered by the wage subsidy contract, for at least the period during which the support granted under the measure is paid out to the employer.
- (52) In the event of failure to comply with the aid granting conditions, the entrepreneur needs to return the granted aid, proportionally to the period that the employee was laid-off in violation of the aid granting conditions.

#### **2.4. Cumulation**

- (53) The aid ceilings and cumulation maxima fixed under the measures shall apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Union.
- (54) Poland confirms that aid under the notified scheme may be cumulated in accordance with point 20 of the Temporary Framework.
- (55) Poland confirms that the total nominal value of the measure remains below the overall caps per undertaking as described in recital (21) above.
- (56) Furthermore, in case aid under these measures are cumulated with other aid granted under this measure or under another measure authorised under the Temporary Framework by the same competent granting authority or by another one, the maximum aid amounts established in the Temporary Framework will be respected.
- (57) Aid under these measures may be cumulated with other compatible aid, de minimis aid or with other forms of Union financing provided that the maximum aid intensities indicated in the relevant Guidelines or Block Exemptions Regulations are respected.
- (58) Poland confirms that, as regards aid granted regarding measures implemented under section 3.10 of the Temporary Framework, the aid recipients cannot receive support for the same eligible costs which have been financed from other public funds.

#### **2.5. Monitoring and reporting**

- (59) The Polish authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework (e.g., by 31 December 2020, a list of measures put in place on the basis of schemes approved under the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years upon

granting of the aid, etc.). As set out in point 44 of the Temporary Framework, Poland will make publicly available relevant information<sup>15</sup> for measures covered by section 3.1., as mentioned in recital (9), on each individual aid granted through the national State aid ‘SUDOP’ database (i.e. a State aid data sharing system).

### **3. ASSESSMENT**

#### **3.1. Lawfulness of the measures**

- (60) By notifying the measures before putting them into effect, the Polish authorities have respected their obligations under Article 108(3) TFEU.

#### **3.2. Existence of State aid**

- (61) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (62) The measures are all imputable to the State because they are administered by public granting authorities as described in recitals (12), (29) and (38) and they are based on the legal Act as described in recitals (10), (11), (27) and (37) for State aid in the form of direct grants, repayable advances, tax or payments advantages, deferrals of tax and wage subsidies. Furthermore, the measures are financed by public funds and, partially, by the European Social Fund as described in recitals (14), (30) and (40), and therefore financed through State resources. As regards measure 6 (interests foregone on the deferred payments) and measure 9, the public authorities forego revenues as described in recitals (34) and (9) above.
- (63) The measures confer an advantage on their beneficiaries in the form of direct grants, repayable advances, tax or payments advantages and wage subsidies as described in recitals (6) and (46). The measures thus relieve those beneficiaries of costs, which they would have to bear under normal market conditions.
- (64) As regards measure 6, it confers a liquidity advantage on its beneficiaries in the form of a deferral – without interest – of tax payments. Under the normal tax rules<sup>16</sup> i.e. in the absence of the measure, the beneficiaries would have to pay property tax instalments in April, May and June 2020. Postponing these payments to a later date corresponds to the granting of an interest free loan in the amounts of the tax deferred and implies an economic advantage (interest not paid on the tax amount deferred over the period of deferral). The measure thus relieves the beneficiaries of costs that they would have to bear under normal market conditions.

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<sup>15</sup> Annex III of the Commission Regulation (EU) No. 651/2014 of 17 June 2014 and of Annex III of the Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014 of 16 December 2014.

<sup>16</sup> Art. 6(9)(3) of the Act of 12 January 1991 on local taxes and fees (Ustawa z dnia 12 stycznia 1991 r. o podatkach i opłatach lokalnych).

- (65) The advantage granted by the measures is selective, since only undertakings affected by the economic repercussions of COVID-19 outbreak and having temporary financial difficulties and those already in difficulty within the meaning of GBER and the applicable Agriculture and Fishery Block Exemptions will benefit from it as described in recitals (17) and (19) above. As regards the measure 7, the advantage is selective since only undertakings active in the culture sector are eligible to aid. Furthermore, as regards measures 3, 5 and 7, undertakings active in the field of primary production of agricultural products are excluded.
- (66) As regards measure 6, the tax advantage is also selective, since it is awarded only to certain groups of undertakings, defined in resolutions adopted by communes based on Article 15q of the legal Act, whose financial liquidity deteriorated due to incurring negative economic consequences due to COVID-19. The selectivity of the measure results from the discretion left to the commune councils to grant tax deferrals or not and from the criteria used to define the groups of entrepreneurs entitled to these tax deferrals. In the light of the general rule according to which the tax is paid in (twelve) monthly instalments according to specific deadlines (including in April, May and June 2020), the measure at stake introduces a derogation only for certain undertakings allowed to defer the payment of these three instalments, although these undertakings are in the same legal and factual situation as other undertakings subject to the tax, in the light of the objective of the tax which is to tax ownership of real estate.
- (67) The measures are liable to distort competition, since they strengthen the competitive position of their beneficiaries. They also affect trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (68) In view of the above, the Commission concludes that the measures constitute aid within the meaning of Article 107(1) TFEU. The Polish authorities do not contest that conclusion.

### **3.3. Compatibility**

- (69) Since the measures involve aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether those measures are compatible with the internal market.
- (70) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.
- (71) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (section 2) that “*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*”. The Commission concluded that “*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*”.

- (72) The measures aim at facilitating the access of firms to external finance and easing the liquidity constraints at a time when the normal functioning of credit markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of the Member State.
- (73) The measures are part of a series of Polish anti-crisis measures conceived at national level by the national authorities to remedy a serious disturbance in their economy. The importance of the measures to stimulate lending by private banks to enterprises during the COVID-19 outbreak and to ease the liquidity constraints is widely accepted by economic commentators and the measures are of a scale, which can be reasonably anticipated to produce effects across the entire Polish economy. Furthermore, the measures have been designed to meet the requirements of a specific categories of aid, “*Aid in the form of direct grants, repayable advances or tax advantages*” described in section 3.1 of the Temporary Framework; “*Aid in the form of deferrals of tax*” described in section 3.9 of the Temporary Framework, as well as the requirements for “*aid in the form of wages subsidies for employees to avoid lay-offs during the COVID-19 outbreak*” described in section 3.10 of the Temporary Framework.
- (74) The Commission accordingly considers that the measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meet all the conditions of the Temporary Framework.

#### *3.3.1. Measures covered by section 3.1 of the Temporary Framework*

- (75) The measures 3, 5, 7 to 11 meet all conditions provided for by the Temporary Framework for limited amounts of aid as described in subsection 2.1.7.:
- The total nominal value of such measures does not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector or EUR 100 000 per undertaking active in the primary production of agricultural products<sup>17</sup> or EUR 800 000 per undertaking for all other undertakings (recital (21) above). All figures used are gross, that is, before any deduction of tax or other charge. The measures therefore comply with points 22(a) and 23(a) of the Temporary Framework.
  - The measures are granted on the basis of aid schemes, each with an estimated budget as described in recital (13). The overall budget of the schemes is PLN 25.5 billion (EUR 5.6 billion<sup>18</sup>) as described in recital (14) above. The measures therefore comply with point 22(b) of the Temporary Framework.
  - The measures may not be granted to undertakings that were already in difficulty on 31 December 2019 (recital (19) above). The measures therefore comply with point 22(c) of the Temporary Framework.

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<sup>17</sup> This cap does not apply to measures 3, 5 and 7 as described in recitals (17) and (19).

<sup>18</sup> ECB EUR exchange rate of 2 April 2020 was PLN 4.5697.

- Aid may be granted under the measures no later than 31 December 2020 (recital (60) above). The measures therefore comply with point 22(d) of the Temporary Framework.
- Aid granted to undertakings active in the processing and marketing of agricultural products is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned (recital (22) above). The measures therefore comply with point 22(e) of the Temporary Framework.
- Aid to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in Article 1(1)(a) to (k) of Commission Regulation (EU) No 717/2014 (recital (23) above). The measures therefore comply with point 23(c) of the Temporary Framework.
- For undertakings active in several sectors to which different maximum amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, the Polish authorities confirmed that they will ensure, by appropriate means such as separation of accounts, that for each of these activities the relevant ceiling is respected and that the highest possible amount is not exceeded in total (recital (24) above). The measures therefore comply with point 23bis of the Temporary Framework.
- The applicable cumulation rules are respected (recitals (53) to (55) above).

### 3.3.2. *Measure covered by section 3.9 of the Temporary Framework*

- (76) The measure 6 meets all conditions provided for by the Temporary Framework as described in subsection 2.2.7..
- (77) In accordance with point 41 of the Temporary Framework, the aid under measure 6 consists in a scheme which is a temporary deferral of a tax applying to undertakings that are particularly affected by the COVID-19 outbreak in specific communes (see recitals (32), (33) and (66)), shall be granted before 31 December 2020 (see recital (31)) and the latest end date for the deferral is 30 September 2020, thus not later than 31 December 2022 (see recitals (31) and (34)).

### 3.3.3. *Measures covered by section 3.10 of the Temporary Framework*

- (78) The measures 1, 2, 4 meet all conditions provided for by the Temporary Framework for limited amounts of aid as described in subsection 2.3.7.:
- As required by point 43 a) of the Temporary Framework, the aid is aimed at avoiding lay-offs during the COVID-19 outbreak (see recitals (46) to (47)).
  - As required by point 43 b) of the Temporary Framework, the aid is granted in the form of a scheme to undertakings, in particular SMEs, that are particularly affected by the COVID-19 outbreak (see recital (47)).
  - As required by point 43 c) of the Temporary Framework, the wage subsidies are granted over a period of not more than twelve months after the

application for aid, for employees that would otherwise have been laid off as a consequence of the suspension or reduction of business activities due to the COVID-19 outbreak and subject to the condition that the benefitting personnel is maintained in continuous employment for the entire period for which the aid is granted (see recitals (51) and (52)).

- As required by point 43 d) of the Temporary Framework, the proportionality of the monthly wage subsidy is assured as the aid intensity of the wage support is dependent on the extent to which the benefitting undertaking's turnover has decreased as a result of the COVID-19 pandemic (see recital (47)) as well as the minimum national wage. The wage subsidy support will range from 50% to a maximum 90% of the national minimum wage per employee, the maximum aid intensity only granted in a situation when the undertaking's turnover has decreased by at least 80% in the evaluated period<sup>19</sup> (see recital (48)(c)). In addition, the wage subsidy will be paid out on a monthly basis following a declaration made by the employer on the actual number of employees and wage related costs subject to the aid granting agreement (see recital (49)).
- As the Polish authorities have confirmed that wage subsidies granted under the measure will not be combined with public funding coming from other sources (see recital (58)), and therefore the overcompensation of the wage costs of the personnel concerned is excluded in line with the requirement of point 43 e) of the Temporary Framework.

(79) Poland confirmed that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (59) above).

(80) The Commission therefore considers that the measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)b) TFEU and meet all the relevant conditions of the Temporary Framework.

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<sup>19</sup> According to paragraph 43 d) the Temporary Framework, a Member State may notify alternative calculations method of aid intensity such as using the national wage average or minimum wage, provided the proportionality of the aid is maintained. In this regard (i.e. when establishing the aid intensity of the wage subsidy on the basis of an alternative method), the Temporary Framework does not prescribe which level of the aid intensity can be considered as proportional. The method used by the Polish authorities to establish the aid intensity of the wage support, as described in recital (48), can be considered as proportional as it is not only based on the national minimum wage (instead of the gross wage of an employee) but also on the drop in turnover of the employer. As a result, only in a situation where the employer recorded a drop in turnover of 80%, the wage subsidy paid out to an employee can amount to 90% of the national minimum wage.



#### **4. CONCLUSION**

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) TFEU.

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President